

1 THOMAS HR DENVER (56872)
2 Mediation Masters
3 96 North Third Street
4 Suite 300
5 San Jose, CA 95112

6 Telephone: (408) 280-7883
7 Facsimile: (408) 292-7868

8 Special Master

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 LANGUAGE LINE SERVICES, INC.,

13 Plaintiff,

14 vs.

15 LANGUAGE SERVICES ASSOCIATES,
16 LLC, et al.,

17 Defendants.

No. C 10-02605 JW

DISCOVERY ORDER NO. 2

18 Plaintiff Language Line's "Request For Determination By Special Master That LSA
19 Cannot Communicate With Language Line Customers Except As Permitted Under The
20 Preliminary Injunction" came on for hearing on November 23, 2010. Briefing having been
21 reviewed and opportunity for oral argument provided, it is ordered as follows:

22 The request is GRANTED.
23

24 REASONS FOR DECISION

25 The Preliminary Injunction in this matter was issued by the Court following
26 substantial briefing and extensive oral presentations by plaintiff and defendants. The
27 Injunction is concise in its language.
28

1 The language which is relevant here is as follows:

2 “Contacting, communicating, soliciting, dealing, or doing
3 business with any of the customers or their representatives
4 appearing on the Brian List, the September 2009 Report or
5 any other document or records containing any of Plaintiffs
6 Trade Secrets, except where Defendant LSA has an existing
7 contractual relationship with such a customer that was not
8 obtained using any of Plaintiffs Trade Secrets, and only to the
9 extent necessary for Defendant LSA to satisfy its currently
10 existing contractual obligations to that customer.”

11 Subsequently, Defendant LSA brought a motion for “Leave to File Motion for
12 Reconsideration” (Document 66). By that motion, Defendant sought leave to have the
13 Court reexamine the language of its Preliminary Injunction Order (Document 50). The
14 motion for Leave to File a Motion for Reconsideration was *denied*. In opposing the
15 present motion, Defendant relies, substantially, on language in the Court’s Order denying
16 LSA’s Motion for Leave to File Motion for Reconsideration which can best be characterized
17 as dicta. The Court found that Defendant’s contentions were unpersuasive, insofar as
18 Defendant claimed that the Court had overlooked or failed to appreciate certain facts. The
19 Court stated as follows:

20 “The Court finds that its Injunction is specific and narrowly
21 tailored, and does not prevent Defendant from contacting
22 customers that it was aware of prior to the alleged misconduct,
23 or any customer that Defendant was aware of independent of
24 Plaintiffs trade secret information.”

25 Subsequent to that Order it came to Plaintiffs attention that named Defendant
26 William Schwartz, in his role as strategic sales manager for Defendant, had directed an
27 email to an individual at JP Morgan Chase, soliciting business. The essence of the email
28 is captured in one sentence, which reads: “My goal is to reach out to you in hopes of
learning more about your organization and some of your initiatives that you are trying to
accomplish this year.”

1 It is abundantly clear from the email and from the arguments set forth by Defendant
2 in opposing the present motion, that JP Morgan Chase is not a “customer” as that word is
3 used in the Preliminary Injunction. The term “customer,” according to Blacks Law Dictionary,
4 is “one who regularly or repeatedly makes purchases of, or has business dealings with, a
5 tradesman or business house.” The Oxford English Dictionary defines a customer as “a
6 person who makes a purchase or gives business, especially habitually to any particular
7 seller.” On the face of the referenced email, Mr. Schwartz is soliciting new business from
8 an entity which is not a “customer.”
9

10 JP Morgan Chase is identified as a customer on the documents which make up
11 Plaintiffs asserted trade secret and which is the subject of the Preliminary Injunction.
12

13 The Special Master notes that Mr. Schwartz is one of the named Defendants who
14 allegedly took Plaintiffs customer list with him when he took employment with Defendant.
15

16 Even accepting at face value Mr. Schwartz’s assertion, set out in the opposing
17 papers, that he found JP Morgan Chase through publicly available sources and without
18 reference to Plaintiffs list, Mr. Schwartz was not soliciting a “customer” with whom LSA “has
19 an existing contractual relationship,” as required by the Preliminary Injunction.
20

21 The Special Master notes further that in deciding to solicit business from JP Morgan
22 Chase sought guidance regarding the Preliminary Injunction not from counsel, but rather
23 from Defendant’s vice president of sales and marketing.
24

25 In its opposition, Defendant seeks an interpretation of the language of the
26 Preliminary Injunction which would allow it to contact any entity identified on Plaintiffs lists,
27 whether or not it was an LSA customer and for purposes beyond maintenance of an
28

1 existing relationship, so long as LSA could somehow asset that it had identified that
2 customer independent of Plaintiffs lists. That is not what the Injunction specifies.

3
4 Defendant argues that its business is being negatively impacted by the Injunction.
5 That, of course, is in the nature of what Injunctions do. The Special Master notes that
6 Defendant is at liberty to conduct its business with existing customers, under the terms of
7 the Injunction and with the entire universe of potential customers who do not appear on
8 Plaintiffs lists.

9
10 As stated by the Court in denying Defendant's request to file a Motion for
11 Reconsideration of the Preliminary Injunction, the meaning of the Preliminary Injunction is
12 clear and the limitations placed upon Defendant straightforward. Defendant may contact
13 entities identified on the lists constituting Plaintiffs trade secrets only where such entity has
14 an existing contractual relationship with Defendant and only for the purpose of satisfying
15 obligations under that contract.

16
17 In its opposition, Defendant assets that it had "registered" with JP Morgan Chase as a
18 "certified woman-owned business enterprise." This "registration" however, does not convert
19 the relationship to one of "customer and supplier" but rather is an approach to a prospective
20 customer. It does not take JP Morgan Chase outside the language of the Injunction.

21
22 Finally, Defendant argues that the information on Plaintiffs list of trade secrets "is
23 essentially useless in LSA's sales efforts" and that "(such information) does not even
24 constitute a 'trade secret.'" Any such arguments constitute a request to reconsider the
25 language of the Injunction yet again and are beyond the scope of the Special Master's
26 assignment.
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1 The parties have ten days from the date of this Order to file any objection.

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3 Dated: November 23, 2010

/s/ Thomas HR Denver

4 THOMAS HR DENVER
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